UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII

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July 19, 2024

Dr. Brian Hill, Superintendent
Mesa County Valley School District 51
2115 Grand Ave.
Grand Junction, CO 81501

By email only to: [redacted content]

Re: OCR Case Number 08-24-1218 – Mesa County Valley School District 51

Dear Superintendent Hill:

This letter is to notify you of the disposition of the above-referenced complaint against Mesa County Valley School District 51 (District), which the United States Department of Education (Department), Office for Civil Rights (OCR) received on January 23, 2024. The Complainant alleges that the District is discriminating against national origin minority students on the basis of limited English proficiency because her daughter, Student 1, who is an English learner (EL), felt compelled to interpret for and assist her EL peers in the classroom, which negatively impacted Student 1's performance in school.

OCR enforces Title VI of the Civil Rights Act of 1964 and its implementing regulation at 34 Code of Federal Regulations Part 100, which prohibit discrimination on the basis of race, color, or national origin in programs and activities that receive Federal financial assistance from the Department. As a recipient of Federal financial assistance from the Department, the District is subject to this law and its regulations.

On March 24, 2024, we notified the District that OCR would investigate whether the District, at [redacted content] (School), is failing to ensure that ELs have equal opportunities to meaningfully participate in the grade-appropriate core curriculum (i.e., reading/language arts, math, science, and social studies) and sent a data request. Upon receiving OCR's notification letter, the District expressed an interest in voluntarily resolving the complaint. Pursuant to Section 302 of OCR's Case Processing Manual (CPM) (July 18, 2022), a complaint may be resolved when, before the conclusion of an investigation, a recipient expresses an interest in resolving the complaint and OCR has determined that identified concerns can be addressed through a voluntary resolution agreement.

After reviewing data from the District and conducting four witness interviews, OCR has compliance concerns regarding the access of EL students at the School to the core curriculum. OCR determined that these concerns can be addressed through a voluntary resolution agreement and that a voluntary resolution agreement is an efficient way to resolve this complaint. The following is a discussion of

the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement (Agreement).

I. Legal Standards

In analyzing the evidence detailed below, OCR applied the following general legal standards under Title VI.

Title VI provides that "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits or, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d-1. The Title VI regulation at 34 C.F.R. § 100.3(a) mirrors the statutory mandate. The Title VI regulation at 34 C.F.R. § 100.3(b)(1) specifies prohibited discriminatory actions including, among others, that a recipient may not (a) deny an individual any service or other benefit of its programs on the basis of race, color, or national origin; or (b) provide different services or other benefits or provide them in a different manner from that provided to others in similar circumstances on the basis of race, color, or national origin. The Title VI regulation at 34 C.F.R. § 100.3(b)(2) provides that, in determining the types of services, benefits, or facilities that will be provided, recipients may not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin.

In *Lau v. Nichols,* 414 U.S. 563 (1974), the Supreme Court determined that where the inability to speak and understand English excludes national origin minority students from effective participation in a recipient school district's program, the district must take affirmative steps to ensure that the EL students can meaningfully participate in the district's programs to effectuate Title VI's nondiscrimination mandate. In reaching this determination, the Supreme Court relied on the Title VI regulations, including all of those cited above, stating: "It seems obvious that the Chinese-speaking minority receive fewer benefits than the English-speaking majority from respondents' school system which denies them a meaningful opportunity to participate in the educational program—all earmarks of the discrimination banned by the regulations." *Id.* at 568. Subsequent to *Lau*, the federal Ninth Circuit Court of Appeals, confirmed that Title VI requires a state education agency (SEA), and by extension local education agencies (LEAs), "to ensure that needs of students with limited English language proficiency are addressed." *Idaho Migrant Council v. Board of Educ.*, 647 F.2d 69, 71 (9th Cir. 1981).

OCR has long interpreted Title VI to require that recipient public school districts meet the legal standards established in the case of *Castañeda v. Pickard*, 648 F.2d 989 (5th Cir. 1981), as part of taking the requisite affirmative steps to ensure that EL students can meaningfully participate in their education programs. OCR has notified the Department's recipients repeatedly since 1985 that it applies *Castañeda*'s standards when assessing if a recipient has complied with the Title VI obligation to provide EL students with meaningful access to its programs. Those standards include this three-prong test:

1. Does the school district provide an ELD program that has an underlying educational theory recognized as sound by experts in the field of ELD education or considered a legitimate experimental strategy?

2. Are the programs and practices used by the school district reasonably calculated to implement the educational theory underlying the district's ELD program effectively? In other words, does the district follow through with practices, resources, and personnel necessary to transform the theory underlying its chosen ELD program(s) into reality?
3. Does the district evaluate the effectiveness of its ELD program after a legitimate trial and do its results indicate that EL students' language barriers are actually being overcome within a reasonable period of time?

648 F.2d 989, 1009-10.

A. English Learners' Access to Core Curriculum

School districts must ensure ELs have equal opportunities to meaningfully participate in all curricular and extracurricular activities, including the core curriculum (e.g., reading/language arts, math, science, and social studies). School districts must provide ELs with language assistance programs, as well as assistance in other areas of the curriculum where their equal participation may be impaired by academic deficits incurred while they are learning English. In addition, as *Castañeda* explains, school districts must enable ELs to attain both English proficiency and parity of participation in the standard instructional program within a reasonable period of time. 648 F.2d at 1010.

Meaningful access to the core curriculum is a key component in ensuring that EL students acquire the tools to succeed in general education classrooms within a reasonable length of time. One way to meet this obligation is to provide full access to the grade-appropriate core curriculum while using appropriate language assistance strategies in the core instruction so that ELs can participate meaningfully as they acquire English. In adapting instruction for EL students, however, school districts should ensure that their specialized instruction (e.g., sheltered content classes) does not use a watered-down curriculum that could leave EL students with academic deficits when they transition from ELD programs into general education classrooms. Such specialized instruction should be designed such that ELs can meet grade-level standards within a reasonable period of time.

To ensure that EL students can catch up in core areas within a reasonable period of time, school districts must provide compensatory and supplemental services to remedy academic deficits that the student may have developed while focusing on English language acquisition.

To meet their obligation to design and implement ELD programs that enable EL students to attain English proficiency and equal participation in the standard instructional period, school districts must use appropriate and reliable evaluation and testing methods that have been validated to measure EL students' English language proficiency and knowledge of the core curriculum. Only by measuring the progress of EL students in the core curriculum during the ELD program can school districts ensure that students are not incurring "irreparable academic deficits." *See Castañeda*, 648 F.2d at 1014.

B. Monitoring the Progress of EL Students

School districts must monitor the progress of their EL students in achieving English language

proficiency (ELP) and acquiring content knowledge using valid and reliable tests to ensure that EL students are able to meet the dual goals of the ELD program discussed in *Castañeda* – acquisition of English and parity of participation in the standard instructional program within a reasonable period of time. *See Castañeda*, 648 F.2d at 1014 ("Valid testing of student's progress in these areas is, we believe, essential to measure the adequacy of a language remediation program."). Monitoring ensures that EL students are making appropriate progress with respect to acquiring English and content knowledge while in the ELD program. School districts should establish rigorous monitoring systems that include benchmarks for expected growth in English proficiency and acquiring academic content knowledge during the academic year and take appropriate steps to assist students who are not adequately progressing towards those goals. The 1970 Memorandum that the Supreme Court relied upon in *Lau* notified recipients that they may not operate ELD programs like dead-end tracks and must exit students from these programs when their language needs are met as soon as possible. 35 Fed. Reg. 11595 (July 18, 1970).

II. Summary of Evidence to Date

A. Background

The District is located on the Western Slope of Colorado and serves almost 21,000 students in 46 schools. Approximately 3.4 percent of the District's students are ELs.

The School serves approximately [redacted content]. During school year (SY) 2022-23, there were 39 ELs at the School: 5 Not English Proficient (NEP)/Entering; 8 Limited English Proficient (LEP)/Developing; 9 Fluent English Proficient (FEP)/Monitoring; and 17 FEP Exited. During SY 2023-24, there were 58 ELs at the School: 12 NEP/Entering; 10 LEP/ Developing; 14 FEP Monitoring; and 22 FEP Exited.

B. ELD Program at the School

During SY 2023-24, the School had one full time ELD teacher and no Culturally and Linguistically Diverse Education (CLDE) instructional assistants. The ELD teacher does not have a CLDE endorsement; she was determined by the District to be highly qualified to teach ELD based on [redacted content]. SY 2023-24 was the ELD teacher's [redacted content] year teaching ELD.

The ELD teacher provides targeted ELD instruction to the School's NEP and LEP students during an ELD block utilizing the EL Achieve Systematic ELD model and curriculum. LEP students receive a minimum of 45 minutes per day of targeted ELD instruction, and NEP student receive 45 minutes per day of targeted ELD instruction plus up to an additional 45 minutes daily, which can be a second ELD block or push-in support.

During SY 2023-24, the ELD teacher regularly provided push in support in two English language arts (ELA) classes [redacted content] and occasionally pushed in to a [redacted content] class. The ELD Teacher collaborated with the School's ELA teachers by co-planning with them but did not have time in her schedule to formally collaborate with the other core content teachers; some collaboration happened informally in the hallways during transition times.

In addition to teaching, the ELD teacher is responsible for identification of ELs, administering the ACCESS test, communicating ACCESS scores to parents, creating English Language Development Plans (ELDPs), and monitoring the progress of ELs. The District's EL Coordinator and the School's Principal told OCR that the ELD teacher was strong on language development and building relationships with students but struggled to complete the required documentation, including writing ELDPs.

C. Student 1

Student 1 was in [redacted content] grade at the School during SY 2023-24. She was identified as an EL on [redacted content], when she was in fourth grade and moved from NEP to LEP when she was in fifth grade. Student 1's 2024 ACCESS scores were 3.6 overall and 3.6 in literacy.

In the "Progress Monitoring" section of Student 1's ELDP for SY 2022-23, there are notes and comments from several teachers regarding Student 1's progress on EL Achieve assessments and in her core classes (e.g., science, math, and social studies). Student 1's ELDP for SY 2023-24 has one comment regarding her progress in ELD class and no information about her progress in core classes.

D. EL Students' Access to Core Content

1. Translation by Students in Core Content Classes

Teacher 1, who was one of Student 1's core teachers during SY 2023-24, told OCR that she had four ELs in her classes during SY 2023-24 and does not believe she had any opt-out students or students in monitoring. Teacher 1 also told OCR that she does not know if any of the four ELs are newcomers. She explained that she receives notification at the start of the school year from the School or District of the ELs in her classes but is not sure if that notice includes the students' proficiency levels. The EL Coordinator told OCR there is a flag in the District's student database, Synergy, that indicates an EL student's proficiency level; Teacher 1 told OCR that she is unaware of an EL flag in Synergy.

According to a spreadsheet provided to OCR, all four of the ELs named by Teacher 1 are NEPs; three are entering and one is emerging. Teacher 1 did not name Student 1 as one of her EL students and told OCR that Student 1 is bilingual and not an EL.

Teacher 1 told OCR that, at the start of the Fall 2023 semester, Student 1 started translating for two ELs in her class, Students 2 and 3, because she wanted to make sure they understood the course material. Sometimes one or two of the other bilingual students in the class would also translate for Students 2 and 3.

In September 2023, Teacher 1 sent Student 1 to the office for talking in class. Student 1 said that she was translating for Students 2 and 3 at the time. Teacher 1 told OCR that she had concerns about Student 1's oral interpretation because it was distracting, and she could not assure what Student 1 was saying was course related because Teacher 1 does not speak Spanish. Teacher 1 was also concerned that Student 1's comprehension of the course material was suffering.

The Assistant Principal and ELD teacher met with Teacher 1 to discuss Student 1's translation. The ELD teacher explained to Teacher 1 that Student 1 needs to talk at the same time as her in order to do simultaneous translation. The following day, the Assistant Principal, Teacher 1, and Complainant agreed to allow Student 1 to continue to translate for her peers because she was trying to be helpful.

In November 2023, Teacher 1 sent Student 1 to the office again for talking in class about topics unrelated to the course material. According to the Principal and Assistant Principal, the Student admitted that she was socializing in addition to translating. The Principal and Complainant agreed to move the Student to another class for the second semester.

Both the Assistant Principal and Teacher 1 told OCR that Students 2 and 3 were not struggling to understand the content in Teacher 1's class and showed growth on the Northwest Evaluation Association (NWEA) assessment in the content area during the first semester. The School uses a 4-point standards based grading system. The EL Coordinator told OCR that a score of 3 means a student is at grade level (i.e., meets state standards); a score of 1 or 2 "would cause concern." Based on transcripts provided to OCR, Student 2 had an average of 1.25 in Teacher 1's class and Student 3 had an average of 2.5 in Teacher 1's class during the first semester of SY 2023-24. Student 1 had an average of 1.75 in Teacher 1's class for the first semester.

The Complainant told OCR that Student 1 translated in another one of her core classes but it was not an issue in that class because Student 1 did not get in trouble for talking. The Principal and Assistant Principal told OCR they are unaware Student 1 was translating in other classes.

2. Access to Core Content Classes

The District's CLDE Program Guidebook states that content area instruction must be scaffolded to meet the proficiency levels of ELs and that core teachers must differentiate instruction for individual student language levels within the course of study. When OCR asked Teacher 1 what strategies she uses to ensure her EL students can access the content in her class, Teacher 1 told OCR that the textbook she uses has a Spanish version, and she assigns her ELs the Spanish version of assignments. Teacher 1 also told OCR that she also uses Google translate on her phone when there is confusion about a concept, vocabulary term, or direction, as does the tutor in her class.

The EL Coordinator told OCR that the District has developed a request form for teachers to fill out if they want to use curricular resources in other languages to support core content so that teachers are thoughtful about the decision and consider the extent to which the EL student can read in his/her native language. The Principal told OCR that she does not know how often teachers at the School are using the form. The EL Coordinator told OCR that the District has not received a curricular request form from Teacher 1.

Teacher 1 additionally told OCR that she has heard of the term "sheltered instruction" but does not provide any sheltered instruction for her EL students; they receive sheltered instruction from the ELD teacher and from the tutor once per week when new material is introduced. OCR asked Teacher 1 to describe the sheltered instruction by the tutor. Teacher 1 responded that the tutor uses her phone to make sure the ELs understand the concepts and vocabulary being presented.

The Principal told OCR that, during the first semester of SY 2023-24, she became concerned that teachers were translating too frequently into students' native language. She therefore provided a training at the end of the first semester or beginning of the second semester at each of the department meetings on when it is appropriate to translate. The EL Coordinator provided a handout for that training from the Center for Applied Linguistics that addresses when translation is useful, other options to use before translation, and best practices for translation. In addition, the EL Coordinator circulated a newsletter on newcomers, which provided best practices on translation. According to the Principal, the use of translation at the School decreased in the second semester of SY 2023-24, and student engagement increased.

3. Professional Development on ELD for Core Content Teachers

Teacher 1 told OCR that the last time she received training on how to work with EL students was approximately fifteen years ago; she chooses to take other professional development courses offered by the District. The District provided OCR with a certificate showing that Teacher 1 completed a 13 minute training in September 2023 on Translation/Interpretation, which addressed communication with LEP parents. One of the slides in that training states that schools must provide translation or interpretation from appropriate and competent individuals and may not rely on or ask students to translate or interpret for parents; it does not address translation by students for students.

The EL Coordinator, Principal, and Assistant Principal told OCR that the District's professional development is aligned with the District's priorities, which at the middle school level are data informed literacy and creating a sense of well-being and belonging at school. The District offers voluntary courses during its Summer Institute on working with ELs to help teachers meet the 45 hours of CLDE required by the Colorado Department of Education (CDE) for renewal of teachers' licenses. None of the witnesses interviewed by OCR knew how many of the School's teachers have met the State's CLDE training requirement.

The Principal and Assistant Principal explained that although there is no required professional development on ELD for content teachers, some of the instructional strategies discussed at department planning meetings are consistent with sheltered instruction, such as turn and talk, word walls, activating prior knowledge, exit tickets, the 3 reads protocol, the Frayer model, and aggressive monitoring. The Principal also explained that the tutors, which are provided by Eureka Tutoring Center, similarly do not receive training on ELD from the District but attend the planning meetings during which instructional strategies are discussed.

4. Monitoring of EL Students' Progress in Core Classes

The EL Coordinator told OCR that ELD teachers monitor how FEP students are doing in their core classes by checking in one time per month with one of the student's core teachers and doing two formal achievement reviews per school year. There is no similar monitoring required for NEPs and LEPs. Some ELD teachers note EL students' progress in their core classes in their ELDPs, but there is no District requirement to do so.

Teacher 1 told OCR that she assesses EL students' access to the curriculum through daily monitoring (i.e., walking around the class), two formative assessments each week, and summative

assessments every two weeks. The School also assesses growth through NWEA testing, which occurs three times per school year.

The EL Coordinator told OCR that the District monitors EL students' progress in core classes by analyzing growth on ACCESS by school and Colorado Measures of Academic Success (CMAS) data for disaggregated populations, including ELs, and comparing the data to that of comparable districts in Colorado. The District does not look in the aggregate at EL students' grades in their core classes.

The District provided OCR with some graphs regarding the District's SY 2022-23 CMAS data and graduation rates, the School's 2023 Preliminary School Performance Framework, and a December 2021 Landscape Analysis completed by a third party. The Landscape Analysis addresses the characteristics of the EL community, the resources needed to support the growing number of ELs, the academic achievement of ELs as compared to all students, EL proficiency levels and growth on ACCESS, EL redesignation rates, and next steps. The EL Coordinator told OCR that the District has not done a similar analysis since 2021.

In the 2023 School Performance Framework, the School received ratings of "Approaching" for ELs in ELA academic achievement on CMAS and "Does Not Meet" for ELs in Math academic achievement on CMAS. The School received ratings of "Approaching" for the academic growth of ELs in both ELA and Math.

OCR analyzed EL students' grades in their core classes based on transcripts provided to OCR. During SY 2022-23, none of the 6 LEPs at the School for which OCR had grades for the full academic year met standards (i.e., achieved a grade of 3) in ELA, math, science, or social studies. The average grade of the 6 LEPs in ELA was 1.52, math was 1.78, science was 1.86, and social studies was 1.75. One student had under a 1 in ELA.

During the first semester of SY 2023-24, of 19 LEPs and NEPs, 1 student met standards in ELA and math, and none in science or social studies. The average grade of the 19 LEPs and NEPs in ELA was 1.65, math was 1.87, science was 1.43, and social studies was 1.97. Three students had under a 1 in ELA, 1 student had under a 1 in math, and 2 students had under a 1 in science.

The Principal told OCR that the School does not use grades to determine who needs academic intervention; intervention is based on standardized test scores (i.e., NWEA and CMAS scores) and teacher referrals through the MTSS process. The Principal also told OCR that she does not know without looking at the School's records approximately how many ELs receive academic intervention (i.e., math lab or skill builders), but she presumes it would be about 75% of them.

Based on the transcripts provided to OCR, during SY 2022-23, of the 6 LEPs, 2 were in math lab and 3 were in skill builders. During SY 2023-24, of the 19 LEPs and NEPs, only 1 appears to have received intervention, which is listed as "Lit/Math plus one." None of the 19 students' transcripts include math lab or skill builders.

III. OCR's Compliance Concerns

Based on the documentary evidence and witness interviews conducted, OCR has compliance concerns that EL students at the School may not be meaningfully participating in the core curriculum for the following reasons.

First, Student 1 and other bilingual students likely translated for their EL peers because their peers appeared to be struggling to access core content.

Second, core content teachers at the School relied heavily on translation rather than other strategies for sheltering instruction to provide access to core content to EL students.

Third, there is no required professional development for core content teachers on how to meet the language needs of their EL students.

Fourth, not all of the School's core content teachers have the opportunity to collaborate with or receive support from the ELD teacher on sheltering instruction for ELs.

Fifth, EL students' progress in core classes is not being sufficiently monitored because there is no process or requirements for monitoring LEPs and NEPs like there are for FEPs, and no one at the School or District level is analyzing EL students' grades in their core classes to assess the extent to which they are accessing core content.

Sixth, ELs who struggled to meet state standards in their core classes during SY 2023-24, as indicated by their grades, were not provided academic intervention services.

Seventh, Teacher 1 was unaware of the proficiency levels of her EL students and did not know that Student 1 is an EL student.

IV. Conclusion

As discussed above, during OCR's investigation, the District agreed to voluntarily address OCR's compliance concerns regarding the participation of EL students in the core curriculum. The attached Resolution Agreement (Agreement), when fully implemented, will fully resolve the compliance concerns in this case consistent with the requirements of Title VI and its implementing regulations. The provisions of the Agreement are aligned with the allegation and issue raised by the Complainant and the information that was obtained during OCR's investigation to date and are consistent with applicable laws and regulations. OCR will monitor the District's implementation of the Agreement through periodic compliance reports about the status of its terms. OCR will provide the District with written notice of any deficiencies regarding its implementation of the terms of the Agreement and will require prompt actions to address such deficiencies. OCR will provide the Complainant with a copy of its monitoring letters. If the District fails to implement the Agreement, OCR will take appropriate action, as described in the Agreement.

The case is now in the monitoring phase. The monitoring phase of this case will be completed when OCR determines that the District has fulfilled the term of the Agreement and is in compliance with

the statutory and regulatory obligations at issue in this case. When the monitoring phase of this case is complete, OCR will close this case and send a letter to the District, with a copy to the Complainant, stating that this case is closed.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District may not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act (FOIA), it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information, to the extent provided by law, that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions, please contact Jennifer Weiser Bezoza, the OCR attorney assigned to this case, at [redacted content].

Sincerely,

/s/

Angela Martinez-Gonzalez
Program Manager

Attachment: Resolution Agreement

cc: Tammy Eret, Counsel for District (by email only)
Susana Cordova, Colorado Commissioner of Education (by email only)